

ARTICLE 3.1 - DEFERRED DEPOSIT LOAN ACT

Section 5-3.1-101 Short title.

This article shall be known and may be cited as the "Deferred Deposit Loan Act".

Section 5-3.1-102 Definitions.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code".

(1.5) "Annual Percentage Rate" means an annual percentage rate as determined pursuant to section 107 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq. All finance charges shall be included in the calculation of the annual percentage rate.

(2) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(2.5) "Default" means a consumer's failure to repay a deferred deposit loan in compliance with the terms contained in a deferred deposit loan agreement.

(3) "Deferred deposit loan" or "payday loan" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:

(a) Accepts a dated instrument from the consumer as sole security for the loan and no other collateral;

(b) Agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and

(c) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted by section 5-3.1-105.

(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this article.

(5) (a) "Lender" means any person who offers, or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method including mail, telephone, internet, or any electronic means.

(b) Lender includes, but is not limited to, a supervised financial organization as defined in section 5-1-301 (45).

(c) Notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this code's interest rate, finance charges, and licensure provisions, all other applicable provisions of this code apply to both a deferred deposit loan and a deferred deposit lender.

(6) "Loan amount" means the amount financed as defined in regulation z of the federal "Truth in Lending Act", 12 CFR 226.18 (b), as amended, or as supplemented by this code, articles 1 to 9 of this title.

Section 5-3.1-103 Written agreement requirements.

Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer; the transaction date; the amount of the instrument; the annual percentage rate charged; a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate; and the name, address, and telephone number of any agent or arranger involved in the transaction. In addition, the written agreement shall include all disclosures required by section 5-3-101 (2). The written agreement shall set a date upon which the instrument may be deposited or negotiated. There shall be no maximum loan term or minimum finance charge. The minimum loan term shall be six months from the loan transaction date. The lender shall accept prepayment from a consumer prior to the loan due date and shall not charge the consumer a penalty if the consumer opts to prepay the loan. A lender may hold an instrument and delay completion of the transaction beyond the loan due date without any additional written agreement or new disclosure, but the lender may not charge any additional fees for holding the instrument or delaying the completion of the transaction.

Section 5-3.1-104 Notice to consumers.

A lender shall provide the following notice in a prominent place on each loan agreement in at least ten-point type:

"A DEFERRED DEPOSIT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS. A DEFERRED DEPOSIT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. RENEWING THE DEFERRED DEPOSIT LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES."

Section 5-3.1-105 Authorized interest rate.

A lender may charge a finance charge for each deferred deposit loan or payday loan that may not exceed twenty percent of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender may

also charge an interest rate of forty-five percent per annum for each deferred deposit loan or payday loan. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based upon the ratio of time left before maturity to the loan term. In addition, the lender may charge a monthly maintenance fee for each outstanding deferred deposit loan, not to exceed seven dollars and fifty cents per one hundred dollars loaned, up to thirty dollars per month. The monthly maintenance fee may be charged for each month the loan is outstanding thirty days after the date of the original loan transaction. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan.

Section 5-3.1-106 Maximum loan amount - right to rescind.

(1) A lender shall not lend an amount greater than five hundred dollars nor shall the amount financed exceed five hundred dollars by any one lender at any time to a consumer. Nothing in this subsection (1) shall preclude a lender from making more than one loan to a consumer so long as the total amount financed does not exceed five hundred dollars at any one time and there is at least a thirty-day waiting period between loans.

(2) A consumer shall have the right to rescind the deferred deposit loan on or before 5 p.m. the next business day following the loan transaction.

Section 5-3.1-107 Multiple outstanding transactions notice.

A lender shall provide the following notice in a prominent place on each deferred deposit loan agreement in at least ten-point type:

"STATE LAW PROHIBITS DEFERRED DEPOSIT LOANS EXCEEDING FIVE HUNDRED DOLLARS (\$500) TOTAL DEBT PLUS APPLICABLE FINANCE CHARGES PERMITTED BY LAW FROM A DEFERRED DEPOSIT LENDER. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THIS TRANSACTION."

Section 5-3.1-108 Renewal - new loan - consecutive loans - payment plan - definitions.

(1) A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer's instrument.

(2) Upon renewal of a deferred deposit loan, the lender may assess an additional finance charge not to exceed an annual percentage rate of forty-five percent. If the deferred deposit loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

(3) A transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed the deferred deposit transaction, the consumer may enter into a new deferred deposit agreement with the lender. If the consumer's instrument is dishonored by the payor financial institution after the transaction is complete and, before the lender receives a notice of dishonor, the lender makes a new loan that does not exceed the maximum allowable loan, the lender shall not be in violation of the maximum loan amount provisions in section 5-3.1-106.

(4) Nothing in this section prohibits a lender from refinancing a deferred deposit loan as a supervised loan subject to the provision of this code, articles 1 to 9 of this title; except that the lender may not contract for or receive the minimum finance charge contained in section 5-2-201 (7).

Section 5-3.1-109 Form of loan proceeds.

A lender may pay the proceeds from a deferred deposit loan to the consumer in the form of a business instrument, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. The consumer shall not be charged an additional finance charge or fee for cashing the lender's business instrument or for negotiating forms of loan proceeds other than cash.

Section 5-3.1-110 Endorsement of instrument.

A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

Section 5-3.1-111 Redemption of instrument.

Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender.

Section 5-3.1-112 Authorized dishonored instrument charge.

If an instrument held by a lender as a result of a deferred deposit loan is returned unpaid to the lender from a payor financial institution due to insufficient funds, a closed account, a stop-payment order, or any other reason, not including a bank error, the lender shall have the right to exercise all civil means authorized by law to collect the face value of the instrument; except that the provisions and remedies of section 13-21-109, C.R.S., are not applicable to any deferred deposit loan. In addition, the lender may contract for and collect one returned instrument charge for each deferred deposit loan, not to exceed twenty-five dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default. A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by

the financial institution or the consumer places a stop-payment order due to forgery or theft.

Section 5-3.1-113 Posting of charges.

Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the finance charges imposed for such deferred deposit loans.

Section 5-3.1-114 Notice on assignment or sale of instruments.

Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least ten-point type to read:

"THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT."

Section 5-3.1-115 Records and annual reports.

A lender shall maintain records and file an annual report in accordance with section 5-2-304.

Section 5-3.1-116 License requirement.

In accordance with section 5-2-301, no person shall engage in the business of deferred deposit loans without having first obtained a supervised lender's license pursuant to section 5-2-302. A separate license shall be required for each location where such business is conducted.

Section 5-3.1-117 Examination and investigation.

A lender may be examined and investigated in accordance with section 5-2-305.

Section 5-3.1-118 Denial of license - discipline.

(1) The administrator may deny a license or discipline a lender in accordance with sections 5-2-302, 5-2-303, and 5-2-306.

(2) (a) If the administrator finds that a lender has violated the code, articles 1 to 9 of this title, the administrator shall notify the lender in writing of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the violations before taking disciplinary action in accordance with subsection (1) of this section. If the administrator determines that such lender has performed such actions contained in such notice, the lender shall not be liable for the violations that have been cured.

(b) This subsection (2) shall not apply if the lender violated the code, articles 1 to 9 of this title, in a repeated or willful manner.

(c) If an alleged violation of the code, articles 1 to 9 of this title, is the result of a bona fide clerical oversight or computer-based error and not the product of the lender's established lending practices, and the alleged violation can be corrected without material change to the terms and conditions of a consumer's loan, the lender shall have thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the alleged violation without incurring any fine or penalty or any required refund of any finance charges associated with the alleged violation. Nothing in this subsection (2) shall exempt a lender from making required refunds if the violation resulted in an overcharge or excess charge to the consumer.

(3) A lender shall have ninety days to comply with any rule, interpretation, or opinion of the administrator that requires a lender to implement new policies or procedures that involve the reprinting of the lender's forms to include new disclosures, or that requires the lender to revise existing computer programs or add new computer programs to comply with the rule, interpretation, or opinion. During the ninety-day period, the administrator shall not deem the lender to be in violation of articles 1 to 9 of this title for noncompliance with the new rule, interpretation, or opinion.

Section 5-3.1-119 Applicability of other provisions of this title.

The provisions of the code, articles 1 to 9 of this title, apply to a lender unless such provisions are inconsistent with this article.

Section 5-3.1-120 Criminal culpability.

A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of section 18-5-205, C.R.S.

Section 5-3.1-121 Unfair or deceptive practices.

(1) No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

(2) A person violates the requirements of this article by engaging in any act that limits or restricts the application of this article, including making loans disguised as personal property, personal sales, and leaseback transactions or by disguising loan proceeds as cash rebates for the pretextual installment sale of goods and services.

Section 5-3.1-122 Unconscionability.

(1) In applying the provisions of sections 5-5-109 and 5-6-112 to the actions of a lender, consideration shall be given to the following, among other factors:

(a) The financial benefits of the loan to the consumer and the level of risk incurred by the lender in extending credit;

(b) The absence of collateral other than the instrument executed by the consumer payable to the lender;

(c) The relation between the amount and terms of credit granted and the cost of making the loan.

(2) A lender shall require a consumer to fill out a loan application at least once in each twelve-month period of time and shall maintain this application on file. The application shall be signed and dated by the consumer.

(3) (a) A lender shall require the consumer to provide a pay stub or other evidence of income at least once each twelve-month period. Such evidence shall not be over forty-five days old when presented. If a lender requires a consumer to present a bank statement to secure a loan, the lender shall allow the consumer to delete from the statement the information regarding to whom the debits listed on the statement were payable.

(b) If the amount borrowed is not more than twenty-five percent of the consumer's monthly gross income and benefits, as evidenced by a paycheck stub or otherwise substantiated, a lender shall not be obligated to investigate the consumer's continued debt position, and the consumer's ability to repay the loan need not be further demonstrated.

(4) If a lender complies with the requirements of subsections (2) and (3) of this section, and the deferred deposit loan otherwise complies with this article and other applicable law, neither the consumer's inability to repay the loan nor the lender's decision to obtain or not obtain additional information concerning the consumer's creditworthiness shall be cause to determine that a loan is unconscionable.

Section 5-3.1-123 Use of multiple agreements for deferred deposit loans.

If a consumer obtains a deferred deposit loan voluntarily and separately from his or her spouse and the consumer's action is documented in writing, signed by the consumer, and retained by the lender, the transaction shall not be considered a violation of section 5-3-205.